Corporate crime update

This monthly corporate crime update covers all areas which are of interest to corporates, including anti-corruption, fraud, money laundering, market abuse, sanctions and compliance related developments.

**SFO investigations**

- **BAE Systems Plc announces global settlement with US and UK**

  The Serious Fraud Office (SFO) and the US Department of Justice (DoJ) have reached a global settlement with BAE Systems Plc (BAE Systems), after the company admitted to control failures in the way it ran its business globally. BAE Systems has been under investigation by the SFO and the DoJ for bribery allegations since 2004 and this is believed to be the first time the transatlantic countries have worked together to reach a multi-jurisdictional settlement.

  Under the SFO's settlement agreement, BAE Systems has pleaded guilty to an offence of failing to keep reasonably accurate accounting records in relation to its activities in Tanzania in accordance with section 221 of the Companies Act 1985. In addition, BAE has agreed to pay £30 million comprising of a financial order to be determined by the court with the balance to be paid as an ex gratia payment for the benefit of the people of Tanzania.

  In addition, in an agreement with the DoJ, BAE Systems has pleaded guilty to one charge of conspiring to make false statements to the US Government in relation to certain regulatory filings and undertakings. BAE Systems will pay a fine of $400 million and has agreed to make additional commitments with regard to compliance.

  In reaching a settlement, the SFO took into account the company's implementation of substantial ethical and compliance reforms and it has confirmed that no further prosecutions will be brought against BAE Systems or any individuals in relation to the matters that had been under investigation by the SFO.

**MoJ publishes UK Foreign Bribery Strategy**

The Ministry of Justice (MoJ) has published the Government's Foreign Bribery Strategy (FBS). The strategy sets out how the Government intends to address and manage the evolving challenges relating to bribery and corruption. The paper highlights that the Bribery Bill will be the keystone of this approach. However the FBS will help reinforce links with the wider international anti-
Fraud

- **TI publishes papers on the Bribery Bill**

  Transparency International (TI) UK has published a paper entitled "Bribery Bill second reading – TI UK supports the Government's Bribery Bill as drafted and urges Parliament to enact it before the general election". The paper sets out TI's views on the revised Bribery Bill.

- **Bribery Bill - latest news**

  The Bribery Bill has completed its passage through the House of Lords and will pass now to be considered by the House of Commons. The House of Lords report on the Bill is available on the website. A key change introduced by the House of Lords is that statutory guidance as to what "adequate procedures" mean is to be published by the relevant minister.

  A copy of our latest e-bulletin detailing the proposals of the House of Lords is available here.

SEC charges General Re Corporation for its role in AIG and Prudential Accounting fraud

The US Securities and Exchange Commission (SEC) has issued a complaint against General Re Corporation (Gen Re) for its involvement in assisting American International Group (AIG) and Prudential Financial Inc. with setting up sham transactions to manipulate their financial statements. The SEC alleged that a foreign subsidiary of Gen Re knowingly entered into two sham reinsurance transactions with AIG in 2000 to allow it to reverse its declining reserve trend and dishonestly report additions to both loss reserves and premiums.

Gen Re has agreed to pay $12.2 million to settle the SEC’s charges as well as pay a sum to the US Postal Inspection Service Consumer Fraud Fund and fund a settlement of a civil class action by AIG’s affected shareholders.

Managing director of Alta Gas Plc ordered to pay £1 million for fraud

The SFO has announced that managing director and shareholder of Alta Gas Plc, Peter Brian Bradley, has been ordered to pay £1 million compensation to victims following confiscation proceedings on 26 January 2010. In 2001, Alta Gas Plc went into administrative receivership which resulted in the receivers of the company discovering a sophisticated system of false accounts that enhanced the profitability of the company. The defendants had obtained a £6.5 million overdraft facility from Barclays Capital and negotiations were underway at the time for a further £70 million investment. The total loss amounted to more than £43 million, including the loss of jobs. An earlier confiscation order of £69,433 was made in January 2009 against co-defendant Peter William Stott.

FSA and City of London Police launch Operation WARN

The FSA and the City of London Police have launched 'Operation WARN' to prevent thousands of people from becoming victims of
Money laundering

- **Shah and Anor v HSBC Private Bank (UK) Limited [2010] EWCA Civ 31**

In December 2009, Hamblen J gave a summary judgment in the case of *Shah and Another v HSBC Private Bank (UK) Limited* against Mr Shah (and his wife). They were claiming damages against the bank for breaches of duty and for failing to follow instructions to process transactions whilst requests for consent under the Proceeds of Crime Act 2002 (POCA) were pending with the Serious Organised Crime Agency (SOCA). On 4 February 2010 the Court of Appeal allowed in part Mr Shah's appeal against the summary judgment.

The Court of Appeal's decision means that customers can now obtain disclosure of banks' internal documents relating to money laundering disclosures and put them to proof at trial of the suspicions they report to SOCA, with the consequence that if they fail to justify any disclosure made that the bank could be ordered to pay damages in respect of any losses suffered. The case also leaves open the possibility that banks may owe duties to their customers to inform them about money laundering disclosures which have been made about them.

The case affects banks but may also affect others who make money laundering disclosures. Banks, financial firms and others in the regulated sector, such as lawyers and accountants, may be caught and even those outside the regulated sector for the purposes of POCA will need to ensure that proper processes are in place where they make Suspicious Activity Reports.

A full briefing is available [here](http://www.herbertsmith.com/NR/rdonlyres/033FECFF-4664-4406-AF14-FA786D7A0D...). In addition, Herbert Smith is organising a webinar on this issue. The invitation is available [here](http://www.herbertsmith.com/NR/rdonlyres/033FECFF-4664-4406-AF14-FA786D7A0D...).

Market abuse

- **Spector Photo Group and Van Raemdonck v Commissie voor het Bank-, Financie- en Assurantiewezien (CBFA)**

The European Court of Justice (ECJ) has published its judgment in the case of *Spector Photo Group and Van Raemdonck v Commissie voor het Bank-, Financie- en Assurantiewezien (CBFA)*. The case follows a request from the Court of Appeal of Brussels to the ECJ to provide an interpretation of Directive 2003/6/EC on insider dealing and market manipulation. The judgment, dated 23 December 2009, but published on 5 January 2010, highlighted that the ECJ agrees with the advocate general's opinion that a person in possession of inside information, who knows or ought to know that the information is considered to be inside information, and who acquires or disposes of financial instruments to which the information relates, will commit insider dealing within the meaning of the Directive.

- **FSMT confirms research analyst and friend committed market abuse**
The Financial Services and Markets Tribunal (FSMT) has found that Robin Chhabra and his friend, Sameer Patel committed market abuse when using inside information to carry out a series of profitable spread bets. The case was referred to the FSMT following an investigation carried out by the FSA into the activities of Mr Chhabra and Mr Patel. The FSA found that in 2004, Mr Chhabra, a research analyst at Evolution Securities Limited covering Ebookers plc and Eidos stocks, passed on confidential information to his friend, Mr Patel, who then used that information to place bets on Ebookers plc or Eidos stocks. The total benefit made by Mr Patel amounted to £85,541. The FSMT's decision confirms the FSA's findings of market abuse. A separate hearing will be held to determine the appropriate action against Mr Chhabra and Mr Patel.

It is also useful to note that FSMT is to be transferred to the Upper Tribunal as of 6 April 2010 following the publication of the Transfer of Tribunal Functions Order 2010 (SI 2010/22).

- **FSA commences criminal proceedings against former iSOFT directors**

  The FSA has commenced criminal proceedings against four former directors, Patrick Cryne, Stephen Graham, Timothy Whiston and John Whelan of iSOFT Group Plc for the offence of conspiracy to make misleading statements, contrary to section 397 (1) (a) and (2) of the Financial Services and Markets Act 2000 and section 1 of the Criminal Law Act 1977.

- **IOSCO completes global framework to fight against cross-border market abuse**

  The International Organisation of Securities Commissions (IOSCO) has announced that it has achieved its goal of having its eligible membership sign onto, or committed to sign, its Multilateral Memorandum of Understanding concerning Consultation, Cooperation and the Exchange of Information (MMOU). The MMOU, which was published in May 2002, provides a mechanism through which securities regulators share key investigative material, including information on beneficial ownership and securities and derivatives transaction records. The MMOU also sets out specific requirements for information exchange to ensure that domestic banking secrecy laws or regulations do not prevent the sharing of information among securities regulators for enforcement purposes.

**Terrorist financing/sanctions**

- **Parliament introduces emergency legislation following Supreme Court ruling**

  On 27 January 2010, the Supreme Court delivered its judgment in the case of HM Treasury v Ahmed and Others. The Court, in considering the UK's powers to freeze the assets of terrorists and those associated with Al-Qaida and the Taliban under the Terrorism Order 2006 (TO) and Al-Qaida and Taliban (United Nations Measures) Order 2006 (AQO) held that the powers contained in the TO, which provide that a person's assets can be frozen on the basis of "reasonable suspicion" without Parliamentary approval, went beyond the requirements imposed in the United Nations Act 1946. The Court found that Section 1 of the UN Act was designed to enable the UK to fulfil its obligations under the Charter of the United Nations to implement UN Security
Council resolutions. By conferring an unlimited discretion on the Treasury as to how those resolutions, which it had a hand in making, were to be implemented was considered to be ultra vires. The Court also held by a majority of six to one (with Lord Brown dissenting) that Article 3 (1) (b) of the AQO must also be quashed on the basis that a person who had been designated under the AQO did not have the means to challenge a decision listing them as designated persons before an independent and impartial judge.

In response to the outcome of the case, HM Treasury requested the Court to grant a stay of its judgment and suspend the ruling for a short period in order to allow the Government to implement emergency legislation. The Court subsequently rejected this request.

Following this, the Terrorist Asset-Freezing (Temporary Provisions) Bill received Royal Assent on 10 February 2010. The Act makes provision for the temporary validity of the Terrorism (United Nations Measures) Order 2006, the Terrorism (United Nations Measures) Order 2001 and the Terrorism (United Nations Measures) Order 2009 and the Channel Islands Order, the Isle of Man Order and the Overseas Territories Order (collectively, the Terrorism Orders). The Act reinstates on a temporary basis the terrorist asset-freezing regime under the Terrorism Orders. From 10 February 2010 until 31 December 2010, directions made under the Terrorism Orders have effect and any further directions made under the Terrorism Orders may be made subject to the legal test being met. The Act also provides that all licences made under the Terrorism Orders may be granted.

In addition, the Act has the effect of validating retrospectively any actions taken by financial institutions and any other persons (other than the Treasury) to maintain existing freezing orders under or in reliance on the Terrorism Orders between 4 February and 10 February 2010.